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समक्ष माननीय मध्यप्रदेश राज्य प्रशासनिक अभिकरण, रायपुर पीठ, मध्यप्रदेश

GOA(S) 3108/05

आ. ए. क्रमांक .99

आवेदक :- राजू जार्ज पिता श्री ए.एन. जार्ज,
आयु 29 वर्ष, निवासी- हाटकचोरा
पोस्ट/तह./जिला-जगदलपुर, म.प्र.

विरूद्ध

अनावेदकगण :- 1.राज्य शासन मध्यप्रदेश द्वारा श्रीमान सचिव , मध्यप्रदेश शासन, गृह मंत्रालय वल्लभ भवन, भोपाल ।

2. श्रीमान् पुलिस उप महानिरीक्षक, विशेष सशस्त्र बल, दक्षिण क्षेत्र, भिलाई, जिला-दुर्ग (म.प्र.)

3. श्रीमान् सेनानी,
सशस्त्र पुलिस प्रशिक्षण विद्यालय जगदलपुर, बस्तर (म.प्र.)

4. श्री अनिल कुमार गुप्ता, प्रभारी सेनानी, सशस्त्र पुलिस प्रशिक्षण विद्यालय जगदलपुर, बस्तर (म.प्र.)

5. श्री कामता सिह तोमर, कम्पनी-कमाण्डर (जॉच अधिकारी) सशस्त्र पुलिस प्रशिक्षण विद्यालय जगदलपुर बस्तर (म.प्र.)

आवेदन पत्र अन्तर्गत धारा 19 प्रशासनिक अभिकरण 1985

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HIGH COURT OF CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI SATISH K. AGNIHOTRI, J

WRIT PETITION (S) NO. 3108 OF 2005

Petitioner **Raju George**

Versus

Respondents **State of Chhattisgarh & Others**

Present :- Shri Prashant Jaiswal, Sr. Advocate with Shri Vinay Pandey, counsel for the petitioner.
Shri Ajay Dwivedi, Panel Lawyer, for the State.

ORAL ORDER
(Passed on 28th July, 2006)

The petitioner was working as Steno in the office of the Armed Police Training School (in short "APTS"), Jagdalpur, under Commandant of the said School. The petitioner was charge sheeted by order dated 14-12-1998 (Annexure-A/2) firstly, for retaining the file in regard to criminal case registered against Constable (Driver) (30) namely, Sultan Hussain from 14-8-1997 illegally for a period of three months and the proceedings could not be initiated against Sultan Hussain, secondly, the petitioner had demanded a sum of Rs.5000/- from Sultan Hussain as bribe not to initiate any action against him and thirdly, in view of the above stated conduct of the delinquent employee, the petitioner has breached the trust and confidence of the department which comes within the purview of grave misconduct.

(2) The departmental enquiry was initiated. Mr. Kamta Singh Tomar, Company Commandant, Police Training School, Jagdalpur, submitted his enquiry report to the Commandant,

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APTS, Jagdalpur, on 11-2-1999 (Annexure-A/5). The Enquiry Officer found charges No.1 & 3 proved against the petitioner and charge No.2 was not found proved in view of the contradictory statements made by the witnesses against the petitioner. Pursuant to the enquiry report, the petitioner was dismissed from his services by order dated 17-5-1999 (Annexure-A/16).

(3) Being aggrieved, the petitioner has filed this petition impugning the enquiry report dated 11-2-1999 and the order of dismissal dated 17-5-1999 on the ground that there is no evidence on the basis of which the Enquiry Officer has found charges No.1 & 3 proved.

(4) Learned senior counsel appearing for the petitioner submitted that in view of the decisions of the Supreme Court in the cases of **Kuldeep Singh vs. Commissioner of Police and others (1999) 2 SCC 10, V. Ramana vs. A.P.S.R.T.C. and others (2005) 7 SCC 338** & **State of Rajasthan and another vs. Mohd. Ayub Naz (2006) 1 SCC 589**, this Court has power of judicial review in case of departmental enquiry when the finding is based on no evidence. It is further contended by learned counsel that there is no evidence at all to prove the charge against the petitioner.

(5) On the contrary, learned counsel appearing for the respondent State submits that it is true that there is no evidence with regard to charge No.1. If all the statements are taken into consideration, the charge No.2 stands proved and the order of dismissal from service is just and proper.

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(6) After having heard learned counsel for the parties and having perused the records appended to the petition and the return, it is found that there is no evidence at all which goes to prove that the petitioner sat over the file and did not proceed with the matter for a period of three months on the basis of some offer made by Sultan Hussain. Immediate superior officer L.R. Kashyap (PW-5) who has to take action on the basis of criminal case registered against Sultan Hussain, has clearly stated that the file was received by him on 14-8-1997 which was handed over to the petitioner on the same day. The In-charge Commandant (PW-5) had further taken steps on 23-8-1997 by calling for explanation of Sultan Hussain and thereafter action was taken on 19-9-1997, 23-9-1997 & 28-9-1997. It clearly establishes that the file was not retained by the petitioner for more than 10 days and the same was made available to the In-charge Commandant (PW-5) who was under obligation to take action as and when it was required by him. Evidences of other witnesses are not on this point but on other points with regard to payment of Rs.5000/- to the petitioner, which has not been found proved by the Enquiry Officer himself.

(7) The contention of the respondent State that the charge No.2 has been found proved on several other evidences cannot be considered at this stage because the Disciplinary Officer has proceeded on the basis of enquiry report to remove the petitioner from service wherein charges No. 1 & 3 have been found proved. Charge No.3 is consequential if charge No.1 is

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found proved. Hence, in view of well settled principle of law that this Court has power of judicial review in case of departmental enquiry if the same is based on no evidence. In the present case the entire enquiry report is based on no evidence.

(8) For the reasons stated above, the enquiry report dated 11-2-1999 and the dismissal order dated 17-5-1999 stand quashed. In the facts of the case when the petitioner has not laid down any pleadings for grant of back wages in particular whether the petitioner was employed gainfully elsewhere or not, in the interest of justice and having regard to the facts of the case, the petitioner is entitled to 50% of back wages. Accordingly, it is directed that the petitioner be reinstated forthwith in service with 50% back wages.

(9) This petition is accordingly allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

GOWRI